

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ERIC TRAVERS, MICHAEL BOUDREAU,)	
JOSEPH COLELLA, CLIFFORD ARPINO,)	
MICHAEL MARINI, and ROCCO MARINI,)	
)	
Plaintiffs)	CIVIL ACTION NO. 04-12635-RWZ
)	
v.)	
)	
CITY OF NEWTON, MASSACHUSETTS)	
and DAVID B. COHEN, in his capacity as)	
Mayor of the City of Newton, Massachusetts;)	
)	
Defendants)	
)	

DEFENDANT CITY OF NEWTON'S MOTION TO DISMISS PURSUANT TO
RULE 12(b)(7) OR, IN THE ALTERNATIVE, MOTION FOR AN ORDER OF JOINDER OF
A NECESSARY PARTY

Pursuant to Federal Rules of Civil Procedure, Rule 12(b)(7) and Rule 19(a)(1)(ii), the defendant City of Newton hereby moves this Court to dismiss the plaintiffs' complaint for failing to join a necessary party, or in the alternative, order the joinder of the Human Resources Division (hereafter, "HRD") of the Commonwealth of Massachusetts, as that party is necessary to this action and its absence therefrom may expose the City to "double, multiple, or otherwise inconsistent obligations" in this matter.

REQUEST FOR ORAL ARGUMENT

Because the defendants believe that oral argument may assist the Court in resolving this matter, they respectfully request a hearing on this Motion and any opposition thereto.

Further support for this motion is provided in the accompanying memorandum of law.

Respectfully submitted,

CITY OF NEWTON and

MAYOR DAVID B. COHEN

By their attorneys,

_____/s/ Mary Jo Harris_____
Keith H. McCown, BBO#329980
Mary Jo Harris, BBO # 561484
Morgan, Brown & Joy, LLP
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Boston, MA 02109-2605
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Dated: March 1, 2005

Certificate of Service

I hereby certify that a copy of the foregoing Motion to Dismiss the Plaintiffs' Complaint for Failing to Join a Necessary Party or in the Alternative, Motion to Join a Necessary Party was served upon Harold B. Lichten, Esq., Pyle, Rome, Lichten, Ehrenberg, & Liss-Riordan, P.C., 18 Tremont Street, Suite 500 Boston, MA 02111 and to Donnalyn B. Lynch Kahn, Esq., City of Newton, 1000 Commonwealth Ave., Newton Centre, MA 02459 by facsimile and first-class mail this 1st day of March 2005.

_____/s/ Mary Jo Harris_____
Mary Jo Harris